

**IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LISA S. BLACK,

) CIVIL ACTION NO. 05-0038

Plaintiff,

VS.

**MEMORANDUM IN SUPPORT OF
DEFENDANT PSS's PROPOSED
FINAL PRETRIAL ORDER**

**JIM BREWER, individually and in his)
official capacity as Acting Principal for)
Hopwood Junior High School,)
COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS PUBLIC SCHOOL)
SYSTEM, and JOHN AND/OR JANE DOE,)**

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANT PSS's PRETRIAL ORDER

Defendant PSS through counsel hereby submits this Memorandum to support the its proposed language for the list of issues to be tried in its proposed Final Pretrial Order.

Plaintiff is correct that despite exchanging drafts the parties have been unable to agree on the proposed language for the CNMI due process claim as set forth in section c(2) of Defendant's Proposed Final Pretrial Order.

Defendant agrees with Plaintiff that the claim of blacklisting arises from a state statutory prohibition and Defendant argued as such in its motion for summary judgment. Plaintiff argues that blacklisting gives rise to due process claim under the CNMI constitution. Defendant's proposed language for the issues to be tried relating to the due process claim do

1 not involve blacklisting. Rather, Defendant's proposed language sets forth the required
2 elements for a due process claim as set forth in CNMI and Ninth Circuit cases.

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4 Plaintiff's proposed issues fail to include the basic elements of the due process claim.
5 The Ninth Circuit has found that an employee raising liberty interest violation must show that
6 "(1) the accuracy of the charge is contested; (2) there is some public disclosure of the charge;
7 and (3) the charge is made in connection with termination of employment".
8

9 Moreover, the court in *Joseph Hill vs. Government of the Northern Mariana Islands*, 1
10 CR 905 (District Court NMI 1984) found that due process interests are implicated when a
11 termination or a decision not to rehire a government employee is accompanied by charges which
12 affects one reputation or standing in the community so as to foreclose the employee from taking
13 advantage of available job opportunities . . .". The Court goes on to state that that the "charge
14 must be public" and "must be so serious as that it belittles his worth and dignity as an individual
15 and, as a consequence is likely to have severe repercussions outside professional life." *Id.* at 925-
16 926.
17

18
19 The language proposed by Defendant incorporates the language from *Matthews* and *Hill*.
20 This language sets forth the elements of due process, which is one of the issues to be tried in this
21 matter and the issue disputed by Plaintiff and Defendants.
22

23 Accordingly, Defendant requests that the Court adopt Defendant's Proposed Final
24 Pretrial Order.
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27

Respectfully submitted by:

_____/s/_____
Heather L. Kennedy F0246
Karen M. Klaver F0241
Attorneys for the Public School System